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BOOK REVIEWS.

THE CONTINENTAL LEGAL HISTORY SERIES. Published under the auspices of the Association of American Law Schools.

- I. A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY.. By various European authors. Translated by Rapelje Howell, F. S. Philbrick, John Walgren, and John H. Wigmore. With an Editorial Preface by John H. Wigmore, and Introductions by Oliver Wendell Holmes, Associate Justice of the Supreme Court of the United States and Edward Jenks, Principal and Director of Legal Studies of the Law Society of England. Boston: Little, Brown, and Company, 1912, pp. liii, 754.
- III. A HISTORY OF FRENCH PRIVATE LAW. By Jean Brissaud, Late Professor of History in the University of Toulouse. Translated from the Second French Edition. By Rapelje Howell, of the New York Bar. With Introductions by W. S. Holdsworth, Reader in English Law, St. Johns College, Oxford, and John H. Wigmore, Professor of Law, Northwestern University. Boston: Little, Brown, and Company, 1912, pp. xlviii, 922.

These two volumes, published simultaneously in the fall of 1912, are the first fruits of the labor of the committee which has been working since 1909 to make available to American lawyers the works of the best legal historians of Continental Europe. The Series is to contain a volume on the "History of Germanic Private Law," one on "Italian Law," one on "French Public Law," one on each of the subjects,—"Continental Criminal Procedure," "Continental Criminal Law," "Continental Civil Procedure," and "Continental Commercial Law," with a concluding volume on the "Evolution of Law in Europe," and an extra volume (to be published as Volume II of the Series) on "The Great Jurists of the World, from Papinian to Von Ihering." The Series extends over a field not before covered in English nor in any continental language and gives in translation the works of the most eminent European specialists on the subjects treated.

The first volume opens with a General Introduction to the Series by the Editorial Committee, which describes the work of the collaborators and the plan of presentation by periods, countries and topics. Acknowledgment is also made of the Committee's indebtedness to Elbert H. Gary, Esq., of New York City, for his ample provision of materials for legal science in the Gary Library of Continental Law (in Northwestern University). The Editorial Preface to this volume, by Dean Wigmore, gives a detailed account of the authors and translators of the volume, the scope of the story and some comments on the meaning of the work. There follows a short and graceful Introduction by Justice Holmes and one by Professor Jenks, written from Carcassone and giving his vision of world law as seen from the Tower of Euric.

Part I of this volume is from the pen of Professor Carlo Calisse, member of the Italian Council of State and Lecturer on Legal History in the

University of Rome, formerly Professor of Legal History in the University of Pisa. It is said to be the only text in any European language which describes continental legal history as a whole for the period ending with feudalism. Part II also comes from the same author's "Storia del diritto italiano." Three other volumes of this work are to be translated for Volume VIII of this series, the "History of Italian Law.

A preliminary survey of events and conditions in Europe during the first six centuries of the Christian Era, from the pen of Professor Maitland, is used as a prologue to the history of law in Italy.

The story of Italian law, as given by Calisse, starts with the Goths and their codes, describes the practical contributions of the Lombards made by the Lombardic legislators, shows how the pseudo Roman Empire of Charlemagne exercised a unifying influence on the law of the whole of Europe, and closes with an account of the several schools of Italian jurists, by whose labors the Italianized Roman Law was fitted to become a general law for continental Europe. Andrew Alciat (born 1492) the greatest of the Italian Humanists went from Italy to Avignon and the torch of legal learning was thus passed from Italy to France.

The history of Continental Law in France is a translation of the first part of the "Manuel d'histoire du droit français," by J. Brissaud, late Professor of Legal History in the University of Toulouse. The striking characteristic of the first period (1100-1500) is the division of France into the country of the written or Roman law and the country of customs, the former embracing the southern third of France, the latter that part to the north of the basin of the Garonne. In the succeeding period, from the beginning of the sixteenth century to the Revolution, the Roman law kept its position in the south and reacted upon the interpretation of the Customs in the north. The humanistic method was brought by the Italian legalists to France and under Cujas, the greatest of the followers of Alciat, the French School attained a position of pre-eminence in juristic scholarship. With the Revolution came a renovation and purification of law in the Code Napoleon, which still represents the greater portion of the civil law of France.

The history of German law is a skilful combination of selections from the "Elements of Legal Science" by Brunner; the "History of Legal Science in Germany," by Stintzing and short connecting passages from the works of Stobbe, Schroeder, Siegel and Zoepfl; with a conclusion by Professor Ernst Freund of the Editorial Committee. As is to be expected from its composite source, this part is not so smooth in presentation as are the first parts of the book, but it is nevertheless a very skilful piece of editorial work and gives an excellent view of the essential features of the German period in the history of law.

There is some necessary overlapping in the accounts of the law in Italy, in France and in Germany, and consequent repetition, but this is reduced to a minimum by cutting the overlapping portions to brief summaries and putting the emphasis on those periods in which the specific contributions to the science of law have been made by the several nations.

The descriptions of the development of law in Italy, France and Germany

complete the story of the main stream of continental law from Justinian to modern times. The account of the important side eddy of law in the Netherlands is given in a chapter written especially for this work by Joost Adrian van Hamel, Professor of Law in the University of Amsterdam. He gives a concise but readable summary of the legal history of his own Northern Netherlands with copious references to similar phases of legal evolution in the Southern Netherlands.

The law of Switzerland is a translation of an essay written for the present volume by Dr. Eugen Huber, Professor of Legal History at Basel. He is the author of the best general history of Swiss private law and the drafter of the Swiss Civil Code, which went into effect with the opening of 1912. This section deals with the development of the cantons, the confederate relations and the cantonal constitutions, and concludes with a short account of the Swiss jurists and movements of legal thought.

Outside of the general account of European law, the law of the Scandinavian peninsula had an independent development, apparently as little affected by the law of continental Europe as was our own common law in England. The article on the law of Scandinavia is a condensation of "Northern Legal Sources," written by Professor Ebbe Hertzberg, with the partial collaboration of other eminent scholars in Denmark, Norway and Sweden.

The law of the Spanish peninsula runs in a stream parallel to the current of Justinian law and until comparatively modern times quite independent of it. The editors of this Series found that no adequate history of the law in Spain was in existence, but they have been particularly fortunate in securing the aid of Senor Rafael Altamira, until recently (1910) Professor of Legal History in the University of Oviedo, and at present director general of primary education in Spain, to write the article for the present volume. It is quite evident that Professor Altamira is a master of his subject. This is shown by his close adherence to the sources and the cautious reserve with which he lays down the limitations of our present knowledge of Spanish law.

The last chapter of the book in Canon Law is a translation of a part of Professor Brissaud's "History of French Private Law." The most suggestive section of this sketch is the one on the influence of Canon Law on secular law.

The work of the editors of this volume is a success. In spite of the diverse sources of the material, the story has a real continuity. Fortunately the history of continental law, like the history of classical philology, has an inner consistency of its own. The Italian Period, the French-Dutch Period and the Modern German Period follow each other in chronological order and may readily be treated in sequence with comparatively little overlapping of the parts, and the accounts of the law of the other countries of Western Europe may be naturally grouped about this central theme.

The best sections are those on the law of Italy and on the law of Spain, possibly because of the greater unity of the themes in these two cases. The translation of the part on Italian law is of superior excellence. In general the translation of the Spanish text runs smoothly, although in some instances the translator in his desire to give a literal translation of the text has apparently

transliterated some linguistic or stylistic peculiarities of the Spanish original, e. g., the "unitarian prurience" (p. 592) and "definitive conjunct results" (p. 593.).

The article on Scandinavian law is of especial value because of the dearth of material on that subject accessible to English readers and because of the peculiar character of the system there portrayed.

The section on French law is not so attractive as the work of the same author and translator in Volume III of the Series. Possibly the condensation of the original, indicated by the translator at the beginning of this part, affects the forme somewhat.

Excellent maps of "Europe about A. D. 500" of "Italy in the Later 1400's" and of "Spain about A.D. 1300" from Dow's "Atlas of European History," have been inserted at appropriate places in the text. The "Legal Map of Germany in the 1500's and the 1800's," is taken from Schroeder's "German Legal History." The "Map of Customary Law in Old France" seems to have been prepared for this work.

The editors of this volume and of the Series are performing a service of great value to the profession. Before we can hope to get out of our own slough of legal provincialism we must know what legalists of other lands and other times have done when placed in like positions and similar circumstances. Most European countries have suffered from the trouble that we sometimes think peculiar to our own system; namely, that of conflicting jurisdictions, and most of them have found a way to remedy the evil. We may well profit by their example. The efforts of the committee of publication of the "Legal Philosophy Series" will furnish us new philosophic bases upon which to reconstruct our system or at least our methods, and the "Continental Legal History Series" will show us how other peoples have worked out their legal problems in an experimental way.

A further account of Volume III of this Series will be given in a later number of this Review.

J. H. D.